Supreme Court, U. S.
FILED
NOV 22 1977
MICHAEL RODAK, JR., CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1977

No. 77-504

J. J. ENOMOTO, et al.,
Appellants,

vs.

JAMES C. WRIGHT, et al.,
Appellees.

On Appeal from the United States District Court for the Northern District of California

RESPONSE TO APPELLEES' MOTION TO AFFIRM

EVELLE J. YOUNGER,
Attorney General of the State of California,
JACK R. WINKLER,
Chief Assistant Attorney General—
Criminal Division,
EDWARD P. O'BRIEN,
Assistant Attorney General,
ROBERT R. GRANUCCI,
Deputy Attorney General,
MICHAEL BUZZELL,
Deputy Attorney General,
6000 State Building,
San Francisco, California 94102,
Telephone: (415) 557-0311,
Attorneys for Appellants.

PERNAU-WALSH PRINTING CO. - 562 MISSION STREET - SAN FRANCISCO, CA 94105

Subject Index

	Page
Preliminary statement	1
Argument	1
Appellees have no interest federally protected in not being placed in security housing units for administrative reasons	1
Conclusion	5

Table of Authorities Cited

Cases	Pages
Meachum v. Fano, 427 U.S. 215 (1976)	2, 3
Montayne v. Haymes, 427 U.S. 236 (1976)	2
Moody v. Daggett, 429 U.S. 78 (1976)	3
Wood v. Strickland, 420 U.S. 308 (1975)	4
Codes	
California Penal Code:	
Section 2600	3
Section 5068	2, 3
Section 5080	2, 3
United States Code:	
Title 15, Section 3330	3, 4
Title 18, Section 4081	2
Constitutions	
United States Constitution:	
Eighth Amendment	5
Fourteenth Amendment	2, 5
Rules	
Supreme Court Rule 16, paragraph 4	1

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1977

No. 77-504

J. J. ENOMOTO, et al.,
Appellants,

vs.

JAMES C. WRIGHT, et al.,
Appellees.

On Appeal from the United States District Court for the Northern District of California

RESPONSE TO APPELLEES' MOTION TO AFFIRM

PRELIMINARY STATEMENT

This response to appellees' motion to affirm is filed pursuant to Rule 16, par. 4, of the Supreme Court Rules.

ARGUMENT

APPELLEES HAVE NO INTEREST FEDERALLY PROTECTED IN NOT BEING PLACED IN SECURITY HOUSING UNITS FOR ADMINISTRATIVE REASONS.

In their motion to affirm, the appellees assert that the district court properly held that California state

prisoners have a liberty interest, protected by the due process clause of the Fourteenth Amendment, in not being placed in segregated confinement for administrative reasons without first being afforded certain procedural due process rights. The appellees assert that this liberty interest has two sources. The first source, according to appellees, is the due process clause of the Fourteenth Amendment. The second source, they contend, is California law. Motion to Affirm, 4. As shown in appellants' Jurisdictional Statement, the appellees are plainly in error.

Clearly the due process clause of the Fourteenth Amendment does not in itself confer any right upon a California prison inmate not to be placed in a security housing unit for safety and administrative reasons. *Montayne v. Haymes,* 427 U.S. 236 (1976); *Meachum v. Fano,* 427 U.S. 215 (1976). This Court has specifically ruled that, absent a state conferred right, a transfer of an inmate to more onerous confinement as a result of an administrative decision does not bring the due process clause into play. *Montayne v. Haymes, supra* at 241-243; *Meachum v. Fano, supra* at 223-229.

Thus it is only to be expected that appellees would look to California law in their attempt to assert a liberty interest in their classification status. They look in vain to California statutes, for those provisions governing administrative classification, placement and transfer of prisoners (Cal. Pen. Code §§ 5068, 5080) like their federal counterpart in Title 18, United States Code section 4081, confer "no legitimate statutory or constitutional entitlement sufficient to invoke due process." *Moody v. Daggett,* 429 U.S. 78, 88 n.9 (1976).

Appellants argue that California Penal Code section 2600, which provides in substance that a state prisoner may be deprived only of such rights as may be necessary in order to provide for the reasonable security of the institution in which he is confined and for the reasonable protection of the public, creates a state-given right not to be placed in segregated confinement. However, Penal Code section 2600, a general statute, in no way deals with classification of prisoners; this specific subject is covered by Penal Code sections 5068 and 5080.

Neither can appellees base a state-given right in California's administrative regulations. Title 15, California Administrative Code section 3330 provides for administrative segregation when it is reasonably believed that a prisoner is a menace to himself and others or a threat to the security of the institution. A determination that an inmate should be segregated under this provision necessarily involves wide administrative discretion.

Neither this administrative regulation, nor any other provision of California law, conditions transfers to security housing units "on proof of serious misconduct or the occurrence of other events." *Meachum v. Fano, supra,* 427 U.S. at 216. As explained in appellants' Jurisdictional Statement at page 16, the decision to place a prisoner in segregation does not require a finding of misconduct; it can be made for a

broad range of reasons, including protection of the prisoner himself. It is by its very nature discretionary.

Appellees nevertheless contend that the lower court correctly construed Title 15, California Administrative Code section 3330 as conferring a liberty interest. But this Court has held that it is for state officials, not federal courts, to construe and interpret state regulations. *Wood v. Strickland,* 420 U.S. 308, 325-326 (1975). Appellants submit that the district court "was ill-advised" to substitute its interpretation of California regulations for the understanding of those officials who adopted the regulations and are entrusted with their enforcement. *Wood v. Strickland, supra* at 325.

CONCLUSION

For the reasons set forth herein and for the reasons set forth in the Jurisdictional Statement, the appellants respectfully submit that jurisdiction in this case should be noted.[1]

Dated, November 21, 1977.

EVELLE J. YOUNGER,
Attorney General of the State of California,
JACK R. WINKLER,
Chief Assistant Attorney General—
Criminal Division,
EDWARD P. O'BRIEN,
Assistant Attorney General,
ROBERT R. GRANUCCI,
Deputy Attorney General,
MICHAEL BUZZELL,
Deputy Attorney General,
Attorneys for Appellants.

---

[1]Argument II of appellees' motion to affirm is surplusage. In essence, the appellants are attempting to argue, as they did in the district court, Eighth Amendment claims of cruel and unusual punishment in the guise of invoking Fourteenth Amendment Due Process claims. The Eighth Amendment is not in issue here. That issue remains to be tried.